

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JULIETA GARIBAY, *et al.*

Plaintiffs,

vs.

DAVID WHITLEY, *et al.*

Defendants.

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Civil Action No. 2:19-cv-00040

DECLARATION OF ERNEST I. HERRERA

I, Ernest I. Herrera, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently a staff attorney at the Mexican American Legal Defense and Education Fund (MALDEF), counsel to Plaintiffs Julieta Garibay, *et al.* (“Plaintiffs”) in this action. I submit this declaration in support of Plaintiffs’ Emergency Application for Temporary Restraining Order or, in the Alternative, Motion for Preliminary Injunction [Dkt. 5] in the above-referenced case

2. I am thoroughly familiar with the facts and arguments in this proceeding. I have personal knowledge of the statements contained in this declaration and am fully competent to testify to the matters set forth herein.

3. On January 25, 2019, Texas Secretary of State David Whitley issued Election Advisory No. 2019-02 (the “Advisory”) to all Voter Registrars and Elections Administrators in Texas. I retrieved the Advisory from the Secretary of State’s website on January 28, 2019. A true and correct copy of the Advisory was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 1.

4. The Advisory referred to a “Notice of Examination for Citizenship (Proof of Citizenship) Letter.” I retrieved the NCE Letter from the Secretary of State’s website on February 9, 2019. A true and correct copy of the NEC Letter was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 2.

5. On January 25, 2019, Secretary Whitley issued a press release announcing the Advisory. I retrieved the press release from the Secretary of State’s website on January 28, 2019. A true and correct copy of that press release was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 3.

6. On February 1, 2019, Secretary Whitley’s Election Director, Keith Ingram, sent an email to counties with additional guidance relating to Election Advisory No. 2019-02. I obtained a copy of this email by viewing an article on the *Texas Tribune*’s website (<https://www.texastribune.org/2019/02/01/texas-acknowledges-its-list-thousands-texas-voters-flagged-citizenship/>) and clicking on a link in that article. This is where I accessed Keith Ingram’s Email To Counties Re: Revised Guidance on February 1, 2019. A true and correct copy of that Email and the article in which I found a link to it are attached to this declaration as Exhibit 4.

7. On February 8, 2019, Attorney General Ken Paxton sent a letter to the Honorable Dawn Buckingham, Chair of the Texas Senate Committee on Nominations. I accessed the letter from the Attorney General’s Office on February 9, 2019, on the KXAN news website at the following link: https://media.kxan.com/nxs-kxantv-media-us-east-1/document_dev/2019/02/08/OAG%20letter%20020819_1549655305022_71789984_ver1.0.pdf. A true and correct copy of that press release was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 5.

8. On January 25, 2019, Attorney General Paxton tweeted: “VOTER FRAUD ALERT: The @TXsecofstate discovered approx 95,000 individuals identified by DPS as non-U.S. citizens have matching voter registration record in TX, approx 58,000 of whom have voted in TX elections. Any illegal vote deprives Americans of their voice.” I retrieved that tweet on February 4, 2019 from <https://twitter.com/KenPaxtonTX/status/1088898595653386240>. A screenshot of that tweet was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 6.

9. On January 25, 2019, Governor Abbott also tweeted: “Thanks to Attorney General Paxton and the Secretary of State for uncovering and investigating this illegal vote [sic] registration. I support prosecution where appropriate. The State will work on legislation to safeguard against these illegal practices. I retrieved that tweet on February 4, 2019 from https://twitter.com/GregAbbott_TX/status/1088918898643271680. A screenshot of that tweet was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 7.

10. On January 27, 2019, President Donald J. Trump tweeted: “58,000 non-citizens voted in Texas, with 95,000 non-citizens registered to vote. These numbers are just the top of the iceberg. All over the country, especially in California, voter fraud is rampant. Must be stopped. Strong voter ID! @foxandfriends.” I retrieved President Trump’s tweet on February 4, 2019 from <https://twitter.com/realDonaldTrump/status/1089513936435716096>. A screenshot of the President’s tweet was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 8.

11. Jane Doe #1 received a letter from the Smith County Elections Administrator on or about February 5, 2019. My office obtained a copy of this letter from Jane Doe #1 on

February 6, 2019. A redacted copy of that letter was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 23.

12. Jane Doe #2 received a letter from the Wood County Elections Department on January 31, 2019. My office obtained a copy of this letter from Jane Doe #2 on February 7, 2019. A redacted copy of that letter was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 24.

13. Maria Felicitas Barbosa received a letter from the Austin County Voter Registrar's office on January 31, 2019. My office obtained a copy of this letter from Ms. Barbosa on February 5, 2019. A redacted copy of that letter was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 25.

14. Elena Keane received a letter from the Galveston County Tax Assessor-Collector's office on January 30, 2019. My office obtained a copy of this letter from Ms. Keane on February 5, 2019. A redacted copy of that letter was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 26.

15. In response to a Public Information Act request that MALDEF sent to the Secretary of State's office on January 25, 2019, the Secretary's office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject " MASS EMAIL (VR/EA/V-670) -- New TEAM Workflow: DPS Non U.S. Citizen Data Comparison" and that Betsy Schonhoff sent on December 5, 2018. A true and correct copy of that email was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 27.

16. In response to a Public Information Act request that MALDEF sent to the Secretary of State's office on January 25, 2019, the Secretary's office sent to me by email a set

of disclosed documents on February 8, 2019, that included an email with the subject “MASS EMAIL (VR/EA/V-666) -- Updated Notice and Mini-Manuals: DPS Non U.S. Citizen Data Comparison” and that Betsy Schonhoff sent on January 4, 2019. A true and correct copy of that email was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 28.

17. In response to a Public Information Act request that MALDEF sent to the Secretary of State’s office on January 25, 2019, the Secretary’s office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject “MASS EMAIL (VR/EA-111) -- List Maintenance (Eligibility) Webinar” and that Betsy Schonhoff sent on January 25, 2019. A true and correct copy of that email was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 29.

18. In response to a Public Information Act request that MALDEF sent to the Secretary of State’s office on January 25, 2019, the Secretary’s office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject “MASS EMAIL (CC/EA/VR - 883) -- Secretary Whitley Issues Advisory On Voter Registration List Maintenance Activity” and that Betsy Schonhoff sent on January 25, 2019. A true and correct copy of that email was filed as an exhibit to Plaintiffs’ Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 30.

19. In response to a Public Information Act request that MALDEF sent to the Secretary of State’s office on January 25, 2019, the Secretary’s office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject “MASS E-MAIL ADVISORY (VR/EA/V-665) - Use of Non-U.S. Citizen Data obtained from the Department of Public Safety” that Betsy Schonhoff sent on January 25, 2019. A true and correct

copy of that email was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 31.

20. In response to a Public Information Act request that MALDEF sent to the Secretary of State's office on January 25, 2019, the Secretary's office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject "TACA Newsletter for January" and that Betsy Schonhoff sent on January 11, 2019. A true and correct copy of that email was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 32.

21. In response to a Public Information Act request that MALDEF sent to the Secretary of State's office on January 25, 2019, the Secretary's office sent to me by email a set of disclosed documents on February 8, 2019, that included a document that appeared to be copies of slides titled "List Maintenance (Eligibility) Full Slide." A true and correct copy of that slide was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 33.

22. In response to a Public Information Act request that MALDEF sent to the Secretary of State's office on January 25, 2019, the Secretary's office sent to me by email a set of disclosed documents on February 8, 2019, that included an email with the subject "Updated Notice of Examination" and that Betsy Schonhoff sent on December 20, 2018. A true and correct copy of that email was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 34.

23. On February 10, 2019, I obtained from the Travis County Tax Office's website (<https://tax-office.traviscountytexas.gov/reports-data>) a document titled "Travis County Non-Citizen Data Fact Sheet - 2019_02_07," that was updated on February 7, 2019. A true and correct copy

of that Fact Sheet was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 35.

24. I obtained the Texas voter registration form from the following link: <https://webservices.sos.state.tx.us/vrapp/vr17-print.asp>. A true and correct copy of that form was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 36.

25. The U.S. Census Bureau reports on the characteristics of native and foreign-born populations. On January 31, 2019, I retrieved this data for Texas by looking up the 2013-2017 American Community Survey 5-Year Estimates for Texas in the U.S. Census Bureau website (https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S0501/0400000US48). A true and correct copy of those data was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 39.

26. Several media organizations across the Nation have reported on the Advisory and subsequent statements and actions taken by Secretary Whitley and county election officials. These reports include articles by the *Texas Tribune*, *Houston Public Media*, *Houston Chronicle*, *Tyler Morning Telegraph*, *Dallas Morning News*, *Associated Press*, *KGNS News*, *San Antonio Express-News*, *Waco Tribune-Herald*, *New York Times*, *Fox News*, *Texas Monthly*, *KUT News*, *Huffington Post*, *Tampa Bay News*, *Miami Herald*, *ABC News*, *Westword News*, *Texas Public Radio*, and *Wood County Monitor*. True and correct copies of those articles were attached to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibits 38, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66 and 67. A replacement version of Exhibit 37 is attached to this declaration. The original Exhibit 37 had text missing from the original article in the chart listing counties.

27. On January 25, 2019, Texas Attorney General Ken Paxton issued a press release regarding the Advisory. I retrieved the press release from the Texas Attorney General's website on January 30, 2019. A true and correct copy of that press release was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 40.

28. The U.S. Department of Homeland Security (DHS) reports profiles of naturalized citizens by state of residence by fiscal year. On February 10, 2019, I retrieved the profiles of naturalized citizens in Texas from fiscal year 2012 through fiscal year 2017 from the DHS website, <https://www.dhs.gov/profiles-naturalized-citizens>. A true and correct copy of those data was filed as an exhibit to Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5] as Exhibit 65.

29. On February 13, 2019, Texas Secretary of State David Whitley sent a letter to Texas House Representative Alma Allen. I received a copy of the letter from a representative of Rep. Allen's office on February 13, 2019. A true and correct copy of the letter is attached as Exhibit 68.

30. On February 14, 2019, I downloaded a copy of the article titled "The AG's office told lawmakers it isn't investigating voters on Texas's citizenship review list[...]*It told a local office the opposite,*" by Alexa Ura, from the *Texas Tribune* website (<https://www.texastribune.org/2019/02/11/texas-ags-office-said-it-was-investigating-voters-citizenship-review-l/>). The article is dated February 11, 2019. A true and correct copy of the article is attached as Exhibit 69.

31. I am also attaching to this declaration an amended and supplemental list of all exhibits in support of Plaintiffs' Emergency Application for Temporary Restraining Order [Dkt. 5].

I declare under penalty of perjury pursuant to 28 U.S.C § 1746 that the foregoing is true and correct to the best of my knowledge. Executed in San Antonio, Texas on February 15, 2019.



Ernest I. Herrera

**IN THE UNITED STATES DISTRICT COURT
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JULIETA GARIBAY, *et al.*

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Civil Action No. 2:19-cv-00040

**AMENDED AND SUPPLEMENTAL PLAINTIFFS' APPENDIX IN SUPPORT OF
THEIR EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER
OR, IN THE ALTERNATIVE, MOTION FOR PRELIMINARY INJUNCTION**

EXH. NO.	DOCUMENT
1	Election Advisory No. 2019-02, Texas Secretary of State (January 25, 2019)
2	"Notice to Registered Voter for Proof of Citizenship," Texas Secretary of State
3	Press Release, <i>Secretary Whitley Issues Advisory On Voter Registration List Maintenance Activity</i> , Texas Secretary of State (January 25, 2019)
4	Ingram Email To Counties Re: Revised Guidance, February 1, 2019
5	OAG letter, February 8, 2019
6	Ken Paxton (@KenPaxtonTX), Twitter (January 25, 2019, 12:37 PM)
7	Greg Abbott (@GregAbbott_TX), Twitter, (January 25, 2019, 1:57 PM)
8	President Donald J. Trump (@realDonaldTrump), Twitter (January 27, 2019, 5:22 AM)
9	Declaration of Bruce J. Elfant, Travis County Assessor-Collector
10	WITHDRAWN EXHIBIT
11	WITHDRAWN EXHIBIT
12	Declaration of Jane Doe #1

EXH. NO.	DOCUMENT
13	Declaration of Jane Doe #2
14	Declaration of Elena Keane
15	Declaration of Maria Felicitas Barbosa
16	Declaration of Julieta Garibay
17	Declaration of Abraham J. Espinosa Flores
18	Declaration of Efren A. Gomez
19	Declaration of Viridiana Tule Carrizales
20	Declaration of Lorena Tule-Romain
21	Declaration of Maria Garcia
22	Declaration of Juanita Valdez-Cox, La Unión Del Pueblo Entero (LUPE)
23	Letter from County of Smith Elections Administrator to Jane Doe #1
24	Letter from Wood County Elections Department to Jane Doe #2
25	Letter from Austin Voter Registrar to Maria Felicitas Barbosa
26	Letter from Galveston County Assessor and Collector of Texas to Elena Keane
27	MASS EMAIL (VR/EA/V-670) – New TEAM Workflow: DPS Non U.S. Citizen Data Comparison from Betsy Schonhoff , December 5, 2018
28	MASS EMAIL (VR/EA/V-666) – Updated Notice and Mini-Manuals: DPS Non U.S. Citizen Data Comparison from Betsy Schonhoff , January 4, 2019
29	MASS EMAIL (VR/EA-111) – List Maintenance (Eligibility) Webinar from Betsy Schonhoff , January 25, 2019
30	MASS EMAIL (CC/EA/VR - 883) -- Secretary Whitley Issues Advisory On Voter Registration List Maintenance Activity from Betsy Schonhoff , January 25, 2019
31	MASS E-MAIL ADVISORY (VR/EA/V-665) - Use of Non-U.S. Citizen Data obtained from the Department of Public Safety from Betsy Schonhoff , January 25, 2019
32	Email Betsy Schonhoff , January 11, 2019 RE: TACA Newsletter for January
33	List Maintenance (Eligibility) Full Slide
34	Email Betsy Schonhoff , December 20, 2018 RE: Updated Notice of Examination (Proof of Citizenship Letter)

EXH. NO.	DOCUMENT
35	Travis County Non-Citizen Data Fact Sheet - 2019_02_07
36	Texas voter registration form
37	James Barragán, Robert T. Garrett, and Julieta Chiquillo , <i>Are Non-U.S. Citizens voting in Texas? Conservatives say yes; voting rights advocates say show me</i> , Dallas Morning News (January 28, 2019) (REPLACEMENT)
38	LouAnna Campbell, <i>Smith County elections office looking into 297 possible non-U.S. citizens registered to vote</i> , Tyler Paper (January 29, 2019)
39	<i>American Community Survey FactFinder, Selected Characteristics of the Native and Foreign-Born Populations (Texas)</i> , United States Census Bureau (2017 5-year ACS data), U.S. Census Bureau
40	<i>AG Paxton: Texas Secretary of State's Office Discovers Nearly 95,000 People Identified by DPS as Non-U.S. Citizens are Registered to Vote in Texas</i> , Ken Paxton, Attorney General of Texas (January 25, 2019)
41	<i>Non-citizen voter registration in Texas</i> , KGNS-TV (January 31, 2019)
42	Alexa Ura, <i>Some Texas voters already are being asked to prove their citizenship after state's announcement</i> , The Texas Tribune (January 28, 2019)
43	James Barragán, Julieta Chiquillo, and Robert T. Garrett, <i>Some names in list of 98,000 potential non-citizen voters included 'in error,' county officials say, citing state</i> , Dallas News powered by the Dallas-Morning News (January 29, 2019)
44	Alexa Ura, <i>Texas quietly informs counties that some of the 95,000 voters flagged for citizenship review don't belong on the list</i> , The Texas Tribune (January 29, 2019)
45	Guillermo Contreras and Dylan McGuinness, <i>State hedges on claim that 100,000 Texas voters aren't citizens, faces federal lawsuit</i> , San Antonio Express-News (January 29, 2019)
46	Cassie L. Smith, <i>State: All 366 on local list of potential noncitizen voters are citizens</i> , Waco Tribune-Herald (January 31, 2019)
47	Liam Stack, <i>Many Texas Voters Whose Citizenship Was Questioned Are in Fact Citizens</i> , New York Times (January 29, 2019)
48	Paul Weber, <i>Texas tells counties noncitizen voter report may be flawed</i> , Associated Press (January 29, 2019)
49	Associated Press, <i>18K Houston area voters removed from citizenship check</i> , The Tribune (January 30, 2019)
50	James Barragán, Robert T. Garrett, and Julieta Chiquillo, <i>Tens of thousands removed from potential non-citizen voters list after counties find flawed data</i> , Dallas Morning News (January 31, 2019)
51	Phil Prazan, <i>County officials: Texas non-citizen voter list is 'too big,' wrong</i> , KXAN (January 30, 2019)
52	Gregg Re, <i>List of 95K ineligible voters on the rolls may be overstated, Texas State Department suggests</i> , FOX News (January 30, 2019)

EXH. NO.	DOCUMENT
53	Carlos Sanchez, <i>Former Texas Secretary of State Believes Inaccurate Voting List Should Be Rescinded</i> , Texas Monthly (January 31, 2019)
54	Ashley Lopez, <i>Gov. Greg Abbott Says Alleged Noncitizen Voter Purge Is A 'Work In Process'</i> , KUT (January 31, 2019)
55	James Barragán and Julieta Chiquillo, <i>Texas issues new guidelines for counties to probe whether noncitizens voted</i> , Dallas Morning News (February 1, 2019)
56	Greg Allen, <i>World War II Vet Caught Up In Florida's Voter Purge Controversy</i> , NPR (May 31, 2012)
57	Janell Ross, <i>Florida Voter Purge Will Continue, Defying Federal Warning</i> , Huffington Post (June 2, 2012)
58	Steve Bousquet, <i>Fla. Gov. Rick Scott's voter purge efforts start anew</i> , Tampa Bay Times (September 27, 2012)
59	Steve Bousquet and Amy Sherman, <i>Florida suspends non-citizen voter purge efforts</i> , (March 27, 2014)
60	Scott Gessler, <i>Colorado's Secretary Of State, Asks 4,000 Registered Voters For Proof Of Citizenship</i> , Huffington Post (August 17, 2012)
61	Jordan Fabian, <i>Voter Purging Resurfaces in Colorado</i> , ABC News (October 24, 2019)
62	Sam Levin, <i>Out of fourteen illegal voters banned after Scott Gessler's campaign, how many voted? Zero</i> Westword (October 12, 2012)
63	Robert T. Garrett, <i>Texas' top election official: About 58,000 non-citizens cast ballots in state elections since 1996</i> , Dallas News (January 25, 2019)
64	Alexa Ura, <i>How An Attempt To Review Texas' Voter Rolls Turned Into A Debacle</i> , Texas Tribune (February 4, 2019)
65	DHS statbooks, FY 2012-2017
66	Jeremy Wallace, <i>Harris County pushes back against state's call for voter purge</i> , Chron (Jan. 28, 2019)
67	Hank Murphy, <i>Letters go out to 21 Wood County voters inquiring about citizenship</i> (Feb. 6, 2019)
68	Letter from Secretary of State to Representative Alma Allen, February 13, 2019
69	Alexa Ura, <i>The AG's office told lawmakers it isn't investigating voters on Texas' citizenship review list. It told a local official the opposite</i> , Texas Tribune (February 11, 2019)
70	Declaration of Martine Hummel
71	Amended Declaration of Juanita Valdez-Cox
72	Declaration of Deborah M. Liles, Ph.D.

EXH. NO.	DOCUMENT
73	Declaration of Lisa Wise

Dated: February 15, 2019

Respectfully Submitted,

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND**

By: /s/ Nina Perales

Nina Perales (Tex. Bar No. 24005046);

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REPLACEMENT

EXHIBIT 37

TEXAS POLITICS JAN 28



Are non-U.S citizens voting in Texas? Conservatives say yes; voting rights advocates say show me



Robert T. Garrett, James Barragán and Julieta Chiquillo



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Updated at 10:40 p.m. Monday: Revised to include additional information from a spokesman for the Texas secretary of state.

AUSTIN -- Conservatives on Monday seized on a state report about non-U.S. citizens possibly voting, saying Texas should tighten procedures to ensure voters are citizens, while voting rights advocates accused the state GOP of gliding over facts to stoke fears and engage in "voter suppression."

Ad



Tom Brady & Gisele Bündchen's \$14 Million

County officials in North Texas and elsewhere, meanwhile, said that they're trying to figure out how best to comply with Secretary of State David Whitley's request that they scrub a newly updated list of about 98,000 residents. According to state officials, they weren't citizens when they obtained a driver's license but eventually wound up on voter rolls.

Dallas County Judge Clay Jenkins, who sits on a commission that chooses the local elections administrator, spoke skeptically, as did fellow Democrats from Dallas to the Legislature.

"We want to do everything that we can to make sure that the election process runs the way it's supposed to, that only people who are citizens are registered to vote -- but that no one is knocked off the rolls for any reason other than they're not qualified to vote," he said.

But Prosper GOP Sen. Pat Fallon, who on Monday filed a bill to require proof of citizenship when people register to vote, said Texas needs to stop taking applicants at their word -- even though they sign a statement below a warning that perjury could lead to 180 days in jail.

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“Right now, when you register to vote in Texas, it’s the honor system,” he said. “That’s not good enough. We need free, open and honest elections or you don’t have a representative republic. Period.”

On Friday, Whitley, who is the state’s top elections official, announced his office was flagging about 95,000 individuals who had received driver licenses while not citizens and then registered to vote. In Texas, non-citizens who are permanent legal residents or have a work visa can receive a driver license, but they are not eligible to vote.

Initially, Whitley said about 58,000 of those who had received a driver’s license without being citizens had voted in an election between 1996 and 2018. Critics said those numbers were misleading and did not take into account people who had received their license while not citizens and later received their citizenship.

On Monday, Whitley spokesman Sam Taylor increased the figures slightly. He said the “initial matching test” that was sent to Attorney General Ken Paxton so he could look at possible “illegal activity” was followed by a Saturday evening computer run. It yielded numbers that were sent to county election officials Saturday night, Taylor said.

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North Texas voter registration data

The Texas secretary of state broke down by county the number of matches of registered voters, as well as how many had a voting history, for county voter registrars to review.

County	Matches	Voting History
Collin	4,699	3,354
Dallas	9,938	6,260
Denton	2,890	1,976
Rockwall	201	143
Tarrant	5,524	3,533

SOURCE: Texas Secretary of State

Jamie Hancock / DMN

“The numbers did not change significantly” from Friday’s, he said -- 98,017 matching records, of whom 58,173 have “voting history.”

“The two figures are taken from different snapshots in time - the list we sent to counties on Saturday being the most current,” Taylor explained.

Premature list?

Jenkins, the Dallas County judge, though, criticized state officials for prematurely pushing a narrative about the voters on the list without having all the information first, such as whether they became naturalized citizens.



Be There for All Babies

“It’s an unusual deal,” Jenkins said. “Understand that it’s the legislative session; there may be a political reason why people want to do a press release before they communicate with the elections administrators or provide any documentation. I don’t think that’s the appropriate way to run the secretary of state’s office.”

Taylor, who is Whitley’s spokesman, said officials with most Texas counties participated in recent trainings offered by the state on voter registration list maintenance. Dallas County was represented at a Jan. 9 training, he said.

Whitley’s action reverberated from Austin to Washington. Long a nemesis to voting rights advocates, he defended the state’s voter ID law while a lawyer in the attorney general’s office, when Gov. Greg Abbott was the state’s top lawyer, recalled Chad Dunn, general counsel for the state Democratic Party.

Whitley should know from the voter ID lawsuit that “their databases are such a mess that they can’t tell anything meaningful from them,” Dunn said.

MS March of Dimes

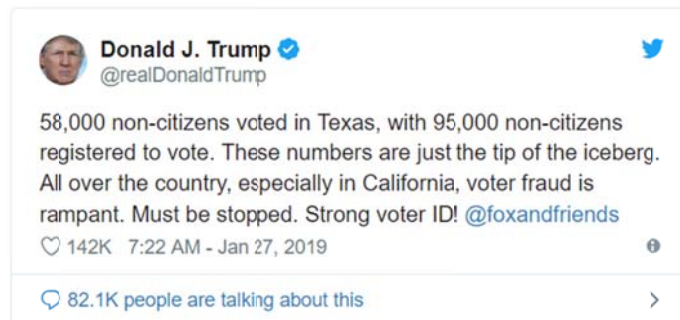
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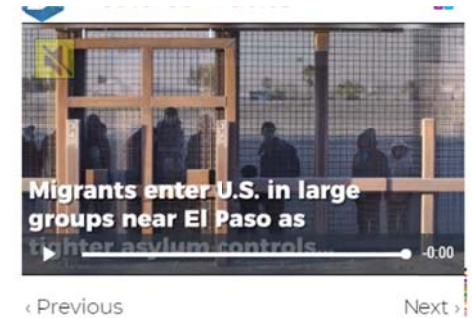
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President Donald Trump, though, welcomed Whitley's announcement as confirmation of the voter fraud he's long alleged, though experts have said it's rare -- and claims that non-citizens vote in large numbers remain unverified.

"These numbers are just the tip of the iceberg," Trump wrote on Twitter on Sunday morning. "All over the country, especially in California, voter fraud is rampant."



The report also emboldened those who have sought stricter requirements on voter registration.



“This is something that we’ve been after for a very long time,” said Daniel Greer, executive director of Direct Action Texas, a grassroots conservative group based in Dallas-Fort Worth. “The step now is for the counties to go in and do their due diligence.”

Greer said Whitley’s report would give his group momentum to ask lawmakers to tighten voting requirements during the legislative session.

“Our election code hasn’t kept up with technology, with a lot of things,” he said. “We need to come back and say where we can, ‘Here’s what we need to be doing.’”

State Rep. Mike Lang, a Republican from Granbury who is a member of the tea-party aligned Freedom Caucus, filed a bill similar to Fallon’s in November. Republican Stephanie Klick of Fort Worth, the chairwoman of the House’s elections committee, said she would “take a look” at the numbers but there was still much that was not known.



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Voting rights advocates, however, have cast doubts on the state's numbers and cautioned local elections officials against taking action based on the state's report.

Civil rights advocates pointed to [a similar initiative in Florida](#), where state officials who compared a driver's license database with voter rolls came up with a list of 180,000 they identified as potential non-citizens in 2012. That list shrunk to 2,625 names. Ultimately, only 85 names were removed from voter rolls, according to news reports.

"Texas officials have taken another page straight out of the voter suppression handbook," said Beth Stevens, voting rights legal director for the Texas Civil Rights Project.

"The 'investigation' outlined by the Secretary of State is woefully inadequate and risks purging thousands of eligible Texans from the voting rolls," she warned, deploring "a radical anti-voter agenda."

The Texas Civil Rights Project along with 12 other groups, including the ACLU of Texas and the League of Women Voters of Texas, called on Whitley immediately to rescind the advisory he sent county officials Friday.

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Migrants enter U.S. in large groups near El Paso as tighter asylum controls

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The groups also urged local county registrars not to take action on the state's report "until the Secretary of State has provided greater transparency on its procedures and ensured there are adequate safeguards for not identifying lawfully registered naturalized citizens."



TEXAS POLITICS

Texas' top election official: About 58,000 non-citizens cast ballots in state elections since 1996

Local officials say checks will take time

For local officials, the checking process could take weeks, said Collin County elections administrator Bruce Sherbet.

"I'm not sure all of it would be done before the May election," he said, referring to May 4 municipal elections that include a wide-open race for Dallas mayor in Dallas County.

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Dallas County elections administrator Toni Pippins-Poole didn't return phone calls and a text message seeking comment on how her office plans to proceed.



Texas Tracker: Your Guide to the State Legislature

According to Collin County's Sherbet and Chris Davis, the president of the Association of Texas Elections Administrators, local officials are used to adding new voters, entering changes of address and name, and canceling the registrations of those who die or are convicted of felonies. That work is automated, Sherbet noted.

In the new task Whitley has urged on them, he said, "each record would need close review prior to additional action."

Sherbet said so far in January, his office has processed about 5,600 changes and additions. On Monday, it received from Whitley a list of about 4,700 names. The "non-citizen" checks would entail more than a month's worth of work, he estimated.



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Asked if he would move very deliberately, as a Harris County official told the [Houston Chronicle](#) would happen in the state's most populous county, Sherbet replied, "I'm not planning on pushing back."

Before Collin officials begin their review of the list, Sherbet said, "I want to speak to our county attorney before we proceed on this end. We haven't started analyzing the file yet."

Tarrant County elections administrator Heider Garcia said it's too early to make a judgment on whether voter fraud is "a big problem" in his county.

"This is a new data source that we plug into our set of information," he said. "We don't know yet if we have a lot of false positives, or if we have a real problem here."

Robert T. Garrett and James Barragán reported from Austin. Julieta Chiquillo reported from Dallas.

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Voter registration data

The Texas secretary of state broke down by county the number of matches of registered voters, as well as how many had a voting history. Find a full list of counties at the bottom of the story.

County	Matches	Voting History
Anderson	55	33
Andrews	32	16
Angelina	95	49
Aransas	24	12
Archer	2	1
Armstrong	No matches	No matches
Atascosa	61	25
Austin	57	23
Bailey	4	1
Bandera	19	12
Bastrop	145	85
Baylor	No matches	No matches
Bee	32	18
Bell	514	272
Bexar	4,912	2,911
Blanco	7	5
Borden	No matches	No matches
Bosque	15	7
Bowie	51	29
Brazoria	1,415	783
Brazos	571	345
Brewster	16	12
Briscoe	No matches	No matches
Brooks	9	3
Brown	19	7
Burleson	8	5



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Migrants enter U.S. groups near El Paso
tighter asylum control

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Burnet	39	16
Caldwell	63	31
Calhoun	34	19
Calahan	8	5
Cameron	1,592	951
Camp	14	7
Carson	1	1
Cass	6	5
Castro	8	1
Chambers	92	46
Cherokee	47	19
Childress	5	3
Clay	3	1
Cochran	4	3
Coke	2	2
Coleman	1	1
Colin	4,699	3,354
Colingsworth	2	1
Colorado	31	15
Comal	155	91
Comanche	28	11
Concho	2	-
Cooke	46	21
Coryell	70	39
Cottle	4	-
Crane	11	6
Crockett	6	3
Crosby	2	2
Culberson	5	2
Dallam	6	3



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Dallas	9,938	6,260
Dawson	3	1
Deaf Smith	25	11
Delta	2	2
Denton	2,890	1,976
Dewitt	14	9
Dickens	No matches	No matches
Dimmit	10	7
Donley	2	-
Duval	19	15
Eastland	4	2
Ector	359	192
Edwards	2	2
Ellis	244	139
El Paso	3,922	2,590
Erath	47	34
Falls	9	3
Fannin	26	14
Fayette	26	14
Fisher	1	-
Floyd	8	3
Foard	1	1
Fort Bend	8,035	4,854
Franklin	5	2
Freestone	19	7
Frio	7	4
Gaines	46	32
Galveston	827	461
Garza	3	-



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Gillespie	30	18
Glasscock	1	1
Goliad	4	3
Gonzales	51	26
Gray	14	5
Grayson	102	57
Gregg	116	54
Grimes	35	17
Guadalupe	242	127
Hale	56	20
Hall	7	1
Hamilton	3	2
Hansford	5	2
Hardeman	3	1
Hardin	17	9
Harris	29,341	15,550
Harrison	23	9
Hartley	8	5
Haskell	No matches	No matches
Hays	365	233
Hemphill	2	2
Henderson	90	45
Hidalgo	3,255	2,022
Hill	46	22
Hockley	19	10
Hood	39	24
Hopkins	40	19
Houston	15	9
Howard	21	11
Hudspeth	22	15
Hunt	73	41
Hutchinson	32	10

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fighting asylum controls

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Irion	1	1
Jack	5	3
Jackson	19	9
Jasper	7	5
Jeff Davis	5	3
Jefferson	346	178
Jim Hogg	3	3
Jim Wells	38	23
Johnson	189	105
Jones	6	3
Karnes	7	6
Kaufman	201	118
Kendall	48	31
Kenedy	No matches	No matches
Kent	1	-
Kerr	67	41
Kimble	6	4
King	No matches	No matches
Kinney	5	3
Kleberg	37	21
Knox	3	2
Lamar	33	21
Lamb	13	6
Lampasas	24	13
La Salle	8	4
Lavaca	13	7
Lee	16	6
Leon	23	14
Liberty	113	57
Limestone	19	5



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Lipscomb	5	1
Live Oak	5	2
Llano	12	6
Loving	No matches	No matches
Lubbock	359	212
Lynn	5	2
Madison	30	13
Marion	5	2
Martin	13	10
Mason	1	-
Matagorda	85	27
Maverick	382	235
McCulloch	8	6
McLennan	366	186
McMullen	1	1
Medina	56	27
Menard	No matches	No matches
Midland	346	188
Milam	25	12
Mills	4	2
Mitchell	5	1
Montague	14	10
Montgomery	2,114	1,289
Mcore	51	20
Morris	6	3
Motley	No matches	No matches
Nacogdoches	50	34
Navarro	80	43
Newton	3	1



Migrants enter U.S.
groups near El Paso
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Nolan	10	7
Nueces	450	239
Ochiltree	18	9
Oldham	No matches	No matches
Orange	37	21
Palo Pinto	36	17
Panola	5	1
Parker	108	76
Parmer	19	7
Pecos	39	28
Polk	44	26
Porter	174	52
Presidio	26	16
Rains	3	1
Randall	85	46
Reagan	4	2
Real	No matches	No matches
Red River	6	3
Reeves	23	8
Refugio	4	2
Roberts	No matches	No matches
Robertson	21	13
Rockwall	201	143
Runnels	9	5
Rusk	30	7
Sabine	2	2
San Augustine	4	3
San Jacinto	18	12
San Patricio	73	44
San Saba	10	6



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Schleicher	6	3
Scurry	11	5
Shackelford	1	1
Shelby	18	7
Sherman	6	1
Smith	291	140
Somervell	14	11
Starr	282	169
Stephens	12	7
Sterling	3	3
Stonewall	No matches	No matches
Sutton	7	3
Swisher	4	1
Tarrant	5,524	3,533
Taylor	128	62
Terrell	1	1
Terry	10	5
Throckmorton	1	1
Titus	60	30
Tom Green	114	54
Travis	4,464	3,144
Trinity	9	9
Tyler	3	3
Upshur	19	8
Upton	4	3
Uvalde	62	35
Val Verde	171	103



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Van Zandt	40	20
Victoria	127	61
Walker	153	72
Waller	143	73
Ward	22	11
Washington	47	20
Webb	1,416	767
Wharton	57	25
Wheeler	7	6
Wichita	89	47
Wilbarger	16	5
Willacy	54	40
Williamson	2,033	1,435
Wilson	38	19
Winkler	7	3
Wise	76	38
Wood	24	11
Yoakum	20	9
Young	13	5
Zapata	33	19
Zavala	11	6
Statewide Totals	98,017	58,173

SOURCE: Texas Secretary of State

Jamie Hancock / DMN

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What you need to know about Texas' list of noncitizen voters



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EXHIBIT 68

The State of Texas



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David Whitley
Secretary of State

February 13, 2019

The Honorable Alma Allen
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Allen:

Last week, I was deeply humbled to appear before the Texas Senate Committee on Nominations to discuss my qualifications to serve as Texas' 112th Secretary of State.

In succeeding all of the outstanding men and women who have served in this position, I have sought to demonstrate to all Texans that I am prepared to take on the responsibilities of the job.

The cornerstone upon which our nation is founded – the right to vote – must be supported by a strong foundation of laws, a code of ethics, and an assurance that everyone who participates in our democracy plays by the same rules.

The Secretary of State is required by law to ensure that voter rolls are accurate and do not include persons who are ineligible to vote while ensuring that all eligible voters can participate in the electoral process. The tasks are complementary: they promote integrity in elections and that, in turn, promotes voter turnout. Democracy in Texas will be strengthened and will endure by striving to achieve two goals: protecting the integrity of elections and combating voter suppression. I will never waver in my commitment to achieving those goals.

Regardless of whether voters were born in the United States or have dedicated themselves to become naturalized U.S. citizens, all eligible Texans deserve to have their voices heard in our democracy. I will faithfully and fully discharge my duty to ensure everyone who is qualified to vote has access to the ballot box.

As Secretary of State, it is my responsibility to ensure that no eligible voters are discouraged from exercising their most fundamental right.

Last month, my office announced the beginning of a list maintenance process, in accordance with state and federal law, to ensure the accuracy of our state's voter rolls. The purpose is to make sure that every single eligible voter has a voice at the ballot box, and that voters who have not attained citizenship do not register and cast ballots in Texas elections.

The Honorable Alma Allen
February 13, 2019
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From the beginning, my intent has been to promote maximum transparency to the public. Like any state agency, we are held accountable to the Texans we serve on a daily basis.

As Texas Secretary of State, I expect to be held accountable every day for my service to the voters of Texas.

After close consultation with the Texas Department of Public Safety (DPS), the counties, and members of the Texas Legislature, I have discovered that additional refining of the data my office provides to county voter registrars, both in substance and in timing, is necessary to ensure a more accurate and efficient list maintenance process.

My office devoted significant time and effort to educating local registrars about the upcoming list maintenance activity. In hindsight, however, before announcing the number of people who may not be eligible to vote, more time should have been devoted to additional communication with the counties and DPS to further eliminate anyone from our original list who is, in fact, eligible to vote. Moreover, the announcement could have been communicated better by including more substance from the election advisory, and by emphasizing my goal to ensure that no qualified voters are removed from the rolls. I recognize this caused some confusion about our intentions, which were at all times aimed at maintaining the accuracy and integrity of the voter rolls. To the extent my actions missed that mark, I apologize.

I want to personally commit to you and your constituents that I will do everything in my power as Texas Secretary of State to protect all eligible Texans' right to vote, and to provide regular and transparent updates on the progress of my office's ongoing list maintenance activities.

I am committed to serving honorably and working with you to help address the challenges of maintaining a free and fair electoral system. I hope to engage more Texans than ever before in the democratic process, and to continue protecting our most cherished right.

Sincerely,

A handwritten signature in black ink, appearing to read "David Whitley", with a stylized, cursive script.

David Whitley
Texas Secretary of State

EXHIBIT 69



The AG's office told lawmakers it isn't investigating voters on Texas' citizenship review list. It told a local official the opposite.

A Paxton deputy told a Guadalupe County official Feb. 1 that the attorney general's office "has pending criminal investigations related to these issues."

BY **ALEXA URA** FEB. 11, 2019 12 PM



Attorney General Ken Paxton's office has made conflicting statements about whether it has opened a criminal investigation into voters flagged for a citizenship review. 📷 Bill Clark/Pool

* Editor's note: This story was updated on Feb. 11 with a correction and on Feb. 12 to add a comment from the Texas attorney general's office.

Texas Attorney General [Ken Paxton](#) assured lawmakers on Friday that his office [hadn't launched criminal investigations](#) into nearly 100,000 voters flagged by the secretary of state's office for citizenship review.

But email correspondence obtained by The Texas Tribune between an assistant county attorney and a Paxton deputy who cites "pending criminal investigations related to these issues" appears to contradict the attorney general's claim.

The two opposing statements were put into writing within a week. Paxton made his assurance in a letter received by the Senate Nominations Committee, which had grilled Secretary of State David Whitley a day earlier over his decision to hand over to the attorney general's office the list of voters whose citizenship he was questioning. Whitley's confirmation is in doubt, in part because of questions from Democrats about whether he knew there were naturalized citizens on the list but referred the names to the state's top prosecutor anyway.

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Paxton wrote that it would "not be possible to investigate tens of thousands of [secretary of state] matters" before local voter registrars had reviewed the lists they received from the state.

"We plan to begin our investigations only once some counties have completed their list maintenance," Paxton said.

But the Friday before, Assistant Attorney General Lauren Downey wrote the opposite in an email to Guadalupe County's assistant county attorney: "The

Office of the Attorney General has pending criminal investigations related to these issues.”

Downey’s statement was in response to a question from the Guadalupe County official, Robert Etlinger, about how best to respond to an open records request for the names of voters on the list the county received from the state.

Etlinger pointed to an email from Keith Ingram, the elections director for the secretary of state, in which he advised counties to reach out to the attorney general’s office for guidance on withholding data that the office considers “law enforcement information.” Documents being used in criminal investigations typically are exempt from open records laws.

“At this time, there is no pending criminal case against anyone and in light of opinions I have received in the past from the AG, it’s pretty clear to me that to assert that exception, there has to be a pending criminal case,” Etlinger wrote.

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How state officials have framed the citizenship review effort has varied widely depending on the context. The secretary of state’s office at first said it was referring the list to the attorney general because that office has the authority “to investigate or prosecute alleged illegal activity.” Paxton immediately trumpeted the existence of the list on social media with the preface, “VOTER FRAUD ALERT.”

Since then, Whitley and his deputies have characterized the review effort as a “collaborative” process that depends on local county officials’ vetting of the state’s list. (The secretary of state gave the list to the attorney general even before the counties received it for review.)

But by classifying the review as a pending criminal investigation in the email to Etlinger, Paxton's office appeared to make it more likely that the list could be hidden from public view.

Guadalupe County originally received a list of 251 voters from the state, but half of them were cleared after the secretary of state's office circled back to inform the county that those individuals were U.S. citizens who were mistakenly included on the list. Last week, the county's election administrator, Lisa Adam, told the Tribune her office was carefully reviewing the remaining names but had not sent any letters demanding that the remaining voters in the list prove their citizenship. The letters would trigger a 30-day countdown for people to confirm their citizenship status or be tossed from the rolls.

In her response, Downey — who serves as a public information coordinator for the attorney general office's — said her office would “submit arguments to assert the law enforcement exception” on behalf of their office if Etlinger wanted to seek a ruling to keep the data from being released. The attorney general, who serves as the state's top law enforcement official, also oversees the office that handles governmental requests to withhold public information.

Jeff Mateer, a Paxton deputy, confirmed in a statement after this story was published that the attorney general's office had in fact opened a “law enforcement investigation file” after receiving information from the secretary of state's office. But he sought to make a distinction between opening an investigation file, which triggers exemptions from releasing public information, and taking “significant investigative action.”

“Questioning in the Senate Nominations Committee showed a concern that the AG's office might take significant investigative action before the counties had conducted their list maintenance,” said Mateer, who serves as the first assistant attorney general. “Our letter from last week alleviated that concern by explaining that, due to our significant backlog of election fraud cases, we plan to allow counties to perform their list maintenance so that our investigation can be informed by the information developed by the counties, before taking any significant investigative action into these matters.”

Among Paxton's assurances to lawmakers was the promise that “justice means charging and prosecuting only if the facts show the person committed the offense.” But Paxton also made clear that the delay in initiating prosecutions against voters was largely due to a lack of resources.

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“Our undersized Election Fraud Unit was experiencing a backlog of over 80 complex cases even before the SOS notification,” he wrote.

During Whitley's confirmation hearing, the governor's nominee to be the state's top election official defended handing the list of registered voters to the attorney general. Whitley held firm in his reasoning while conceding that he was aware the list could contain mistakes. He repeatedly waved off Democrats' questions about the erroneous inclusion of tens of thousands of U.S. citizens on the list.

Whitley has faced intense scrutiny over the citizenship review effort. On Jan. 25, Whitley announced that his office had compiled its list of 95,000 voters. Those on the list had indicated to the Department of Public Safety that they were not U.S. citizens when they obtained a driver's license or ID card. But within days, it became clear the list didn't account for people who became naturalized citizens and registered to vote after obtaining those IDs.

The secretary of state's office quietly informed county officials it had erroneously flagged thousands of people who had registered to vote at DPS offices and proved they were citizens. Local officials then said they had identified individuals on the list who registered to vote at naturalization ceremonies. Other citizens who were flagged have confirmed publicly that they became naturalized citizens after obtaining their driver's licenses.

On Monday, Ingram — the secretary of state's elections director — confirmed what Whitley wouldn't. Testifying before the House Elections Committee, Ingram acknowledged that the secretary of state's office knew the list of voters it was sending to counties for citizenship reviews likely included naturalized citizens.

“We understood there was a significant possibility,” Ingram said.

Correction: An earlier version of this story misstated the timing of the email communication between Robert Etlinger and Lauren Downey.

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